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**THE ROLES OF THE PERSONAL REPRESENTATIVE IN ESTATE
ADMINISTRATION IN MALAYSIA**

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Abstract

The administration of an estate refers to a process of managing and distributing the deceased's estate to the beneficiaries which take effect after his death. The tasks to administer the estate are handled by the personal representative from the beginning until the end of the administration. Appointment of a capable personal representative is therefore important as the administration of estate deals with various responsibilities throughout the entire process. This article heeds the notion that the appointment of an incompetent personal representative disrupts the process in the administration of estate that leads to adverse implications, including the misappropriation and delay in distribution of assets. This paper discusses the roles and duties of the personal representative and the comparison between the individual and institution assigned as the personal representative. This paper also highlights the challenges encountered by the personal representative in managing the estate of the deceased. As part of its research method, this qualitative legal study undertakes a library based study through the analysis of selected materials including journal articles, textbooks, statutes and cases. The findings indicate that ignorance of the roles and lack of deliberation in appointing a capable personal representative serve as factors leading to adverse management which often results in incompleteness of the administration. The insights from this paper can contribute in instilling the awareness among the public as to the importance of appointing a capable personal representative in estate administration.

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Keywords: Estate administration, administrative bodies, beneficiaries.



1. Introduction

Administration of an estate deals with the management of a deceased's estate, starting from his death until the distribution of the asset to the beneficiaries, subject to the remnants of the estate. It represents the technical part in succession matters which involves legal and procedural rules. One of the key formalities in estate administration is the appointment of a personal representative. Such an appointment involves going through the application from the administrative bodies where the mark of such an appointment is reflected through a certain document known as the letters of representation. A personal representative connotes a different term in testate and intestate estate cases. In testate cases where the deceased died leaving a valid will, the personal representative is known as the executor. While in intestate cases, the personal representative is known as the administrator. The roles undertaken by both parties are nevertheless, the same despite the different terminology. The appointment of the personal representative is closely related to the administrative bodies as the appointment of the personal representative is authorized by these institutions. Appointment of a personal representative does not only denote the authorized person in dealing with the deceased's estate, but it is also related to the issuance of letters of representation which will be used as part of the process at the later stage of estate administration.

2. Problem Statement

This paper is based on the notion that there is no proper guideline for an individual to be appointed as a personal representative. Hence, such a lack has resulted in adverse implications related to the practice of certain personal representatives.

3. Research Questions

1. How does a personal representative administer the estate of the deceased?
2. What are problems faced by the personal representative while managing the deceased's estate?

4. Purpose of the Study

The purpose of this paper is to study the role of the personal representative assigned to individuals as well as to corporations. This paper also includes a comparative study between the two subjects in determining the advantages and disadvantages of both types of personal representatives.

5. Research Methods

This qualitative legal study undertakes a library-based study through the analysis of selected materials including journal articles, textbooks, statutes and cases.

6. Findings

6.1. Administrative Bodies and Its Jurisdictions

Administration of estates in Malaysia is governed by four main bodies namely the civil High Court, Estate Distribution Unit, *Amanah Raya Berhad* and the Syariah Court (Nasohah et al., 2012).¹ However, the discussion in this paper excludes the role of the Syariah Court as the focus of this research is on the institutions which can issue letters of representation. The roles of each body, independent of their own are distinguished by their jurisdiction which confirm the extent of their authority (Ramli & Mohd Taib, 2012). Therefore, the application for distribution of estate through these administrative bodies must be in line with their jurisdiction though having multiple administrative bodies may cause confusion to the public as to which administrative that they need to attend.

6.1.1. Civil High Court

Subject to the types and amount of assets, the process of obtaining the letters of representation may commence at the civil High Court. The letters of representation authorize the personal representative to manage the estate of the deceased. The civil High Court issues two types of letters of representation, namely the grant of Probate and the Letter of Administration. In determining the source of its jurisdiction, several related statutes need to be referred to. Cross-reference between Article 74 and the Ninth Schedule of the Federal Constitution shows that matters involving succession, testate and intestate, probate and letter of administration fall under the exclusive power of the civil courts.²

Three factors determine the jurisdiction of the administrative bodies in issuing the letters of representation namely the value of the asset, the type of the asset as well as the status of death; whether the deceased died testate or intestate. In general, the High Court possesses unlimited monetary jurisdiction in issuing the Grant of Probate or Letter of Administration³ provided that the minimum value should be more than two million ringgit. In probate cases, the monetary value is determined by the gross value of the deceased's asset.⁴ So long as the value of the asset is more than two million ringgit, the High Court possesses the jurisdiction, irrespective of the type of the asset.

6.1.2. Issuance of Grant of Probate

The High Court has the jurisdiction to issue the Grant of Probate in cases where the deceased died leaving a valid will. The purpose of the Grant of Probate is to affirm the appointment of the executor from the will and allows him to act within the scope of his authority in administering the estate.⁵

¹ Unlike the other administration bodies however, Syariah Court is not statutorily empowered to issue letters of representation. The roles of the Syariah Court in succession context involves matters such as ascertaining the entitled heirs for Inheritance Certificate distribution, determining the portion of the beneficiaries under Inheritance Certificate, proving the validity of *wasīyyah* and issuing order in relation to jointly-acquired properties.

² This however, does not include the above matter in relation to the Islamic law.

³ Other administrative bodies such as Estate Distribution Unit and Amanah Raya Berhad are limited to certain amount of monetary value.

⁴ The term "probate cases" is used to describe court cases involving issuance of both Grant of Probate and Letter of Administration.

⁵ The executor is appointed specifically from the will of the deceased and the power to act as a personal representative is also derived from the same testamentary declaration.

The Grant of Probate possess an advantage over the Letter of Administration where it excludes the requirement to furnish administration bond (Zakiah, Mohammad, Mohd Ashrof, Hanifah Musa, & Nadirah, 2016). Administration bond is required in the application for Letter of Administration by providing two persons who own an asset of equal amount to the value of the deceased's asset or more to act as a security for the personal representative in dealing with the estate. The administration bond rule, however, does not apply to *Amanah Raya Berhad* which acts in its capacity as a personal representative.⁶

6.1.3. Issuance of Letter of Administration

The Letter of Administration is another form of letters of representation, which is issued by the civil High Court. Literally, the Letter of Administration is granted in intestate cases where the deceased died leaving no valid will. An application for a Letter of Administration shall be made to the High Court's registrar. Upon filing an application, the court will set up a specific date for a hearing application in front of the registrar.⁷ After the court is satisfied with the application, it will then issue the original sealed copy of Letter of Administration. The duration for the extraction of the grant from the beginning of the application varies on the smoothness of the process.⁸

6.2. Estate Distribution Unit

The Estate Distribution Unit deals with the administration of estates involving small estates in which the monetary value is below two million ringgit.⁹ The term "died intestate" however is not definite as to whether the term is only applicable in cases involving non-Muslims or it could include the Muslims. Therefore, even though a deceased Muslim left a valid will, the beneficiaries can still make an application for estate administration through the Estate Distribution Unit provided that the value of the small estate is below two million ringgit. This is due to the interpretation of the term "intestate" which refers to a situation when a person died without leaving any valid will.

The Small Estates (Distribution) Act, however, only considers the definition of the will based upon the Wills Act 1959. The Muslim will, however, is not governed by the said Act, though some of its features share the same similarities with the non-Muslim will. Therefore, application for testate estate administration of deceased Muslim can be conferred to under the jurisdiction of the land administrator provided that the monetary value of the small estate is less than two million ringgit (Pembahagian Pusaka Kecil, n.d.).

6.2.1. Issuance of Distribution Order and Letters of Administration

The officer in charge of hearing cases under the Estate Distribution Unit is known as the land

⁶ Section 34 of Public Trust Corporation Act 1995 excludes the requirement to furnish security by the Corporation which act as administrator.

⁷ The hearing will be granted after the court is satisfied that everything is in order including correct, sufficient information and attached document.

⁸ There is no fixed period for the completion of the whole process beginning from the application until the issuance of letters of representation. However, according to the feedback given by the ARB officer, a non-contentious probate cases takes approximately three months to issue a sealed copy of the Letters of Representation.

⁹ Generally, intestate cases involving small estates falls under the jurisdiction of the Estate Distribution Unit. For testate cases involving small estates, such will be under the jurisdiction of the civil High Court. Refer to Section 5 of the Small Estates (Distribution) Act 1955.

administrator.¹⁰ The land administrator has jurisdiction to deal with the administration of the small estate in any part of land situated in Malaysia (Pawanchik Marican, 2007).

In general, there are two types of orders which can be issued by the land administrator, namely the Distribution Order and Letter of Administration (Azmi & Mohammad, 2015). The Distribution Order allows the beneficiary to proceed with the collection of the asset and to proceed with the transfer as well as the distribution of the deceased's estate.

On the other hand, issuance of a Letter of Administration will be made to the appointed beneficiary, which normally occurs in two situations. The first situation is where the individual title is not yet available. The second situation is where the individual title is available, but the land is still subjected to encumbrances such as charges. The appointment of the administrator through the Letter of Administration is made so that the administrator can administer the estate accordingly.

6.3. Amanah Raya Berhad

Amanah Raya Berhad (ARB) is a government-owned company, incorporated under the Companies Act 1965. It inherits the statutory authorities and jurisdiction under the Public Trust Corporation Act 1995. In matters pertaining to estate administration, ARB is empowered under the law to administer the estate of deceased person as one of the administrative bodies.

6.3.1. Issuance of Declaration and Direction by the Corporation

ARB is statutorily authorized to issue the Declaration and Direction. The two types vary depending on the value of the subject matter and the administration process. According to Section 17(1) of the Public Trust Corporation Act 1995, the corporation possesses the jurisdiction to administer cases involving the deceased who died testate or intestate, leaving a movable asset which value is six hundred thousand ringgit and below.

There are two roles assumed by the Corporation in this matter, which is the role of the administrative body in issuing the order, as well as the role of the personal representative in administering the deceased's asset. Although it may not involve any court process, administration of the estate will only commence after the deceased's status has been ascertained. Therefore, if it involves a deceased Muslim, there is a need for the beneficiaries to first apply for the Inheritance Certificate from the Syariah Court unless all of them have consented to their own custom distribution (Kamarudin & Abdullah, 2016).¹¹

6.3.2. ARB in its capacity as Personal representative

The ARB also manages the estate of the deceased in its capacity as personal representative (Mohammada, Suratman, & Law, 2017). The jurisdiction to administer the deceased's asset lies under several different provisions. Under Section 8(1) of Small Estate (Distribution) Act 1955, the Corporation is among the parties who is authorized to file an application for Distribution Order or Letter of Administration at the Estate Distribution Unit. In this case, should the deceased have died intestate and his asset falls under

¹⁰ Section 2 of the Small Estates (Distribution) Act 1955.

¹¹ First, the beneficiary will have to acquire the *fara'id* distribution order or also known as Inheritance Certificate from the Syariah Court. After that, the said order will be attached with the other documents to be submitted to the Corporation for the purpose of applying for administration of estate.

the category of a small estate, the ARB, upon application made by the beneficiaries, may act as a personal representative to apply for Distribution Order or Letter of Administration, whichever is appropriate to the case involved.

Whereas under Section 13(1) of Public Trust Corporation Act 1995, it is stated that the Corporation may apply from the High Court for the grant of Probate or Letter of Administration. Both of these sections indicate that the Corporation may administer the deceased's estate, similar to individuals, as the personal representative.

6.4. The Roles of the Personal Representative in the Administration of Estates

The personal representative carries with him/her a significant responsibility in managing the deceased's estate. It is, therefore, pertinent for the personal representative to understand the procedures in estate administration in Malaysia to ensure a smooth administration.¹²

In terms of the overall duties, both the executor and the administrator share similar tasks which begin after the letters of representation is granted. However, in terms of actual derivation of the power to administer the deceased's estate, the authority for the executor to act is actually derived from the will itself as the appointment through the will allow the executors to act. In this matter, the authority to act is invoked after the testator has passed away. On the other hand, the administrator is being empowered through the letter of administration which appoints a person to administer the deceased's estate.

6.4.1. Duties of Personal Representative Prior to the Application of Letters of Representation

Generally, the task of the personal representative commences once the administrative bodies issue the letters of representation. Among the earliest tasks of the personal representative involves the identification of asset and liabilities (Muda, 2016). In this matter, the personal representative has a duty to identify the deceased's asset.

Identification of the beneficiaries must also be made by the personal representative as soon as possible. For cases involving non-Muslim, the availability of a valid will could ease the job of the executor as distribution will be made in accordance with the wishes of the deceased, as stated in his testamentary declaration. For Muslims however, the personal representative must consider is the beneficiaries named in the will and the beneficiaries who are entitled to his asset based on the rule of *farā'id*.

6.4.2. Duties of Personal Representative during the Application for Letters of Representation

This process revolves mainly around obtaining the letters of representation from any of the administrative bodies.¹³ Application for letters of representation is one of the crucial parts of estate administration since the deceased's asset is technically frozen and can only be withdrawn via application attached with the letters of representation.¹⁴

For deceased Muslims, application for letters of representation from the administrative bodies can

¹² For instance, the personal representative needs to know regarding the application for letters of representation from the administrative bodies.

¹³ This task however, does not include obtaining the Inheritance Certificate from the Syariah Court as the deceased's heir need to present at the court, not just the personal representative.

¹⁴ As the deceased passed away, every asset belongs to him remain frozen or locked, depending on the type of asset.

only be done after obtaining the Inheritance Certificate from the Syariah Court. The Inheritance Certificate will be part of the supplementary documents to be attached to the application for the grant of probate.

6.4.3. Duties of Personal Representative after the Issuance of Letters of Representation

The letters of representation are required to retrieve the asset of the deceased. Only the personal representative is allowed to retrieve the asset from the financial institutions which hold the asset of the deceased. The task of the personal representative in this part is to deal with the deceased's estate, starting from the identification until the distribution of asset to the beneficiaries.¹⁵ In practice, there are three stages involved in dealing with the deceased's asset namely collection, transmission and distribution of the asset. The duties stated involve both personal representatives of individuals and ARB.

6.4.4 Collection of Asset

The term collection refers to the process of obtaining the deceased's asset from the third party. In other words, the process involves the actual collection of the asset which is in the possession of certain bodies, such as banks, Employees Provident Fund (EPF), insurance and trust companies.¹⁶ These types of asset can only be withdrawn through letters of representation. In addition, there are other assets such as jewellery and other valuable goods which are deposited and kept by third parties and collecting these assets also require the letters of representation.

However, there are also other types of asset that do not require letters of representation for the purpose of withdrawal. An asset such as EPF account under nomination or *Amanah Saham Nasional Berhad* (ASNB) account below a certain amount bypasses the requirement to furnish letters of representation, making the collection process quicker and easier.

6.4.5. Transmission of Asset

In certain situations, immovable asset such as lands and houses will be transferred from the deceased to the personal representative through a process known as transmission before the asset is transferred to the beneficiaries.¹⁷ In succession cases, it is not possible to transfer the land directly from the deceased to the beneficiaries as in the normal transfer process because different rules and processes applied in succession matters. For that purpose, the transmission form will be filed at the land office.

6.4.6. Distribution of Assets

Distribution of the asset is the last part in estate administration where all legal heirs look forward to receiving the asset. Subjected to the remaining of the deceased's asset after the payment of debts, loans and

¹⁵ Distribution of asset is subjected to the remaining of the asset after the settlement of the deceased's debts and other liabilities, which takes priority over the distribution.

¹⁶ The asset of the deceased, mainly in form of bank or other financial institution account is put the state of inactive or frozen. Extraction of these assets could only be made the authorized person, hence justifying the requirement of the letters of representation.

¹⁷ Transmission is also considered as a proof of transfer of ownership from the deceased to the beneficiary, via the personal representative. Transmission process hence, denotes the process which takes place subjected only to inheritance cases, distinguishing itself from the normal ownership transfer process. Furthermore, this process is supported by the documents such letters of representation which indicates the authority of the personal representative in commencing such process.

other liabilities, the actual distribution can be carried out accordingly.

If the deceased died leaving no will, the distribution should then be made in accordance with the law. For non-Muslims, the Distribution Act 1958 has specified the list of individuals who are entitled to deceased's asset, namely the deceased's spouse, parents and children. As for Muslims, the distribution will be made in accordance with the rule of *farā'id*. The Inheritance Certificate will be referred to by the personal representative in distributing the asset to the entitled beneficiaries. However, if the beneficiaries mutually agree that a different method of distribution should take place, the personal representative shall distribute the asset in accordance with their mutual consent.

6.5. Comparison between an Individual and the ARB as the Personal Representative

The complexity in the administration of estate varies on a case to case basis. The existence of various types of assets means that there will be a lot of tasks to be conducted by the personal representative and this may also warrant a lengthier completion time. Among the determining factors in ensuring the smoothness of the process in estate administration lies within the capacity of the personal representative himself, be it among the individuals or the Corporation.

The following table 1 lists some of the general comparisons between the individual and the ARB in undertaking the role of personal representative.

Table 01. List of Comparison between an individual and the ARB as the Personal Representative.¹⁸

Types	Individual	ARB
Neutrality	May be influenced or biased to one of the parties	Unbiased to any parties.
Account/details on the management of asset	The possibility of the asset being used by the personal representative without justification.	The detailed account provided by ARB as to deceased being used. Example; expenses, fees, distribution to beneficiaries.
Perpetuity	The possibility of the personal representative dying.	Corporation continues to exist.
Renunciation	The possibility of the personal representative renouncing his roles.	Cases will be handled by the corporation until completion. No risk of renunciation by the Corporation.
Expertise	Expertise level is unknown. The possibility of the case being handled by a person lacking knowledge.	Over nicety years of experience and expertise in carrying out the task as a personal representative.
Fees	Normally does not incur fees. Subject to the agreement among beneficiaries.	Involves a significant amount of fees charged as service. The fees, however, are deducted from the deceased's estate.
Duration	No specific duration. The possibility of the case being prolonged due to the incapacity of the personal representative.	Based on KPI: Cases under section 13: 24 months Cases under section 8: 12 months Cases under section 17: 6 months

¹⁸ The information stated in the table is the result of interview with officials from ARB which was conducted in 2016 during the researcher's attachment session. This fact is also corroborated from the researcher's past experience as former ARB executive officer.

Security over the asset	The possibility of the asset being misused by the personal representative.	The asset is secured by the corporation. Any information about the use of the asset for operation purpose or distribution shall be informed to the beneficiaries.
Technical difficulties	Difficulties in locating the relevant documents related to the deceased's asset.	The possibility of the case being delayed due to the transfer of officer/person in charge of the files.

7. Conclusion

Appointing a capable personal representative should be made by prioritizing two basic elements, namely, the knowledge in estate administration as well as the good character of the person to be appointed (Razimi & Shahril, 2016). Having proper knowledge and expertise is very much the essence of estate administration so as to avoid unnecessary delay due to the lack of knowledge. Delay in estate administration only complicates the situation and may give rise to other problems which eventually hinders the completion of the case.¹⁹ Lack of deliberation in choosing the suitable personal representative only makes the estate administration prone to adverse implication which affects, primarily the beneficiary and potentially affects the reputation of the administrative bodies and the government as a whole.

To conclude, not all cases require the service of ARB as a personal representative as some cases can be settled provided that the personal representative possesses the abovementioned qualities. Still, the aspect of cooperation and the tolerance from all family members is essential to ensure the completion of estate administration. Estate administration should involve active and constant participation from all relevant parties in the entire process, not only during the distribution of the asset.

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